



New South Wales

# Explosives Amendment Act 2023 No 23

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Explosives Amendment Act 2023*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Explosives Act 2003 No 39

### [1] Section 3

Omit section 3. Insert instead—

#### 3 Definitions

The dictionary in Schedule 3 defines words used in this Act.

**Note—** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

### [2] Section 4A

Insert after section 4—

#### 4A Meaning of “supply”

- (1) A person supplies an explosive or explosive precursor by—
  - (a) transferring ownership of the explosive or explosive precursor to another person, whether by sale, gift or otherwise, or
  - (b) transferring possession of the explosive or explosive precursor to another person, or
  - (c) providing another person with the means to take possession of the explosive or explosive precursor, or
  - (d) offering or negotiating to supply the explosive or explosive precursor, or
  - (e) receiving the explosive or explosive precursor for supply, or
  - (f) having the explosive or explosive precursor in the person’s possession for supply, or
  - (g) exposing or exhibiting the explosive or explosive precursor for supply, or
  - (h) consigning or delivering the explosive or explosive precursor for supply, or
  - (i) arranging for or allowing another person to supply the explosive or explosive precursor.
- (2) Subsection (1)(b) and (c) do not apply to persons acting under the authority of the same licence.

### [3] Section 6 Licences required for handling explosives and explosive precursors

Insert “this Act or” before “the regulations” in section 6(1)(a).

### [4] Section 6A Security clearance must be held in certain circumstances

Insert “this Act or” before “the regulations” in section 6A(a).

### [5] Section 7, heading

Omit “Conveyance”. Insert instead “Transport”.

### [6] Section 7

Omit “conveying”. Insert instead “transporting”.

### [7] Section 9 Supply of explosives to minors

Omit “sell or otherwise supply any” from section 9(1).

Insert instead “supply an”.

**[8] Part 2A**

Insert after section 9—

## **Part 2A Authorisation of explosives**

### **Division 1 Authorisation process**

#### **9A Application to have explosive authorised**

- (1) A person may apply to the regulatory authority for the authorisation of an explosive.
- (2) An application must be—
  - (a) made in the approved form, and
  - (b) accompanied by—
    - (i) the documents specified in the approved form, and
    - (ii) the application fee determined by the regulatory authority.
- (3) The applicant must, if asked by the regulatory authority, give the regulatory authority—
  - (a) additional information the regulatory authority reasonably requires to determine the application, and
  - (b) 1 or more samples of the explosive for testing.
- (4) A sample of an explosive given to the regulatory authority under subsection (3)(b) must be given at no cost to the regulatory authority.

#### **9B Authorisation**

- (1) The regulatory authority may, after receiving an application under section 9A, by written notice to the applicant—
  - (a) grant the application and authorise the explosive, with or without conditions, or
  - (b) refuse the application.
- (2) An application is taken to have been refused if the regulatory authority has not decided the application within 3 months after receiving the application.
- (3) After authorising an explosive, the regulatory authority may, by written notice to the applicant—
  - (a) impose conditions or further conditions on the authorisation, or
  - (b) vary or revoke a condition of the authorisation.
- (4) Without limiting the grounds on which an application may be refused, an application may be refused if—
  - (a) the application has not been properly made, or
  - (b) the applicant has failed to give the regulatory authority additional information requested by the regulatory authority, or
  - (c) the applicant has failed to give the regulatory authority a sample of the explosive requested by the regulatory authority.
- (5) An authorisation remains in force until cancelled by the regulatory authority.

## Division 2 Register of explosives

### 9C Register of explosives

- (1) The regulatory authority must keep a register of explosives.
- (2) The register of explosives must be kept in the way determined by the regulatory authority.
- (3) The register of explosives must include the following particulars for each authorised explosive—
  - (a) the commercial name,
  - (b) the proper shipping name,
  - (c) the UN number,
  - (d) the classification code,
  - (e) the name of the applicant,
  - (f) the conditions of the authorisation,
  - (g) the information prescribed by the regulations.
- (4) In this section—

*proper shipping name* has the same meaning as in the ADG Code.  
*UN number*, for an explosive, means the identification number shown in the ADG Code in relation to the explosive.

### 9D Publication of register

- (1) The regulatory authority must make the register of explosives publicly available in the way prescribed by the regulations.
- (2) When making the register publicly available, the regulatory authority—
  - (a) must not include the name of an applicant, and
  - (b) need not include the conditions of an authorisation.
- (3) The regulatory authority must keep the register up to date.

## Division 3 Cancellation of authorisation

### 9E Grounds to cancel an authorisation

- (1) The regulatory authority may cancel the authorisation of an explosive on 1 or more of the following grounds—
  - (a) the authorisation of the explosive in another State or Territory has been cancelled,
  - (b) the regulatory authority reasonably considers the authorisation should be cancelled—
    - (i) on safety grounds, or
    - (ii) on public interest grounds, or
    - (iii) because the regulatory authority considers the authorisation to have no ongoing effect, or
    - (iv) on grounds prescribed by the regulations.
- (2) The cancellation of an authorisation does not entitle a person to compensation.

**9F Cancellation process**

- (1) Before cancelling the authorisation of an explosive, the regulatory authority must make reasonable efforts to give the applicant—
  - (a) at least 30 days written notice of the regulatory authority’s intention to cancel the authorisation, and
  - (b) an opportunity to make submissions to the regulatory authority, in the way and within the time specified in the notice, about the proposed cancellation.
- (2) The regulatory authority cancels the authorisation of an explosive by—
  - (a) giving public notice of the cancellation in the way prescribed by the regulations, and
  - (b) removing the particulars of the explosive from the register of explosives.
- (3) The regulatory authority must make reasonable efforts to give the applicant written notice that the authorisation of the explosive has been cancelled.

**[9] Part 3, Division 1, heading**

Insert before section 10—

**Division 1 Preliminary**

**[10] Part 3, Division 2**

Insert after section 13—

**Division 2 Security clearances**

**13A Application for security clearance**

- (1) An individual may apply to the regulatory authority for a security clearance.
- (2) An application for a security clearance must be—
  - (a) made in the approved form, and
  - (b) accompanied by—
    - (i) the documents, including photographs, specified in the approved form, and
    - (ii) the fee determined under section 17.

**13B Grant or refusal of application for security clearance**

- (1) The regulatory authority must consider an application made under section 13A and decide to—
  - (a) grant the application and issue a security clearance, or
  - (b) refuse the application.
- (2) The regulatory authority must refuse the application if—
  - (a) the regulatory authority is not satisfied the individual applying for the security clearance is—
    - (i) at least 18 years of age, and
    - (ii) a fit and proper person to be granted a security clearance, or
  - (b) the Commissioner of Police, in a report given under section 13, recommends that the application should be refused on the basis of

criminal or security intelligence or other information available to the Commissioner.

- (3) The regulations may prescribe additional grounds on which an application for a security clearance must or may be refused.

**[11] Section 14, heading**

Omit “licences and”.

**[12] Section 14(1)**

Omit “Licences and security”. Insert instead “Security”.

**[13] Section 14(2) and (3)**

Omit “licence or” wherever occurring.

**[14] Section 14(4)**

Omit the subsection.

**[15] Section 15**

Omit “licence or” wherever occurring.

**[16] Section 16, heading**

Omit “licences and”.

**[17] Section 16(1) and (2)**

Omit the subsections.

**[18] Part 3, Division 3**

Insert after section 16—

**Division 3 Licences**

**16AA Definitions**

In this division—

*safety management plan* means a plan—

- (a) describing the procedures in place to manage hazards and risks to safety associated with the activities that are to be authorised by a licence, and
- (b) prepared in accordance with the regulations.

*security plan* means a plan—

- (a) describing the facilities, systems and procedures in place for the safe and secure handling of explosives or explosive precursors under a licence, and
- (b) prepared in accordance with the regulations.

**16AB Licence types**

- (1) The following types of licences may be granted by the regulatory authority—
- (a) blasting explosives user’s licence,
  - (b) fireworks, single use, licence,
  - (c) licence to import,



- (d) licence to manufacture,
  - (e) licence to store,
  - (f) licence to supply,
  - (g) licence to transport by vehicle,
  - (h) licence to transport by vessel,
  - (i) licence to use security sensitive dangerous substances,
  - (j) pyrotechnician's licence,
  - (k) a type of licence prescribed by the regulations.
- (2) The regulations may prescribe the activities permitted to be carried out under each type of licence.

**16AC Eligibility for licence**

- (1) A person is eligible to be granted a licence if—
- (a) for an individual—the individual—
    - (i) is at least 18 years of age, and
    - (ii) holds a security clearance, and
    - (iii) complies with the eligibility criteria prescribed by the regulations for the type of licence, or
  - (b) for a corporation—
    - (i) a responsible person for the corporation holds a security clearance, and
    - (ii) the corporation complies with the eligibility criteria prescribed by the regulations for the type of licence.
- (2) Subsection (1)(a)(ii) and (b) do not apply to a fireworks, single use, licence.

**16AD Application for licence**

- (1) An application for a licence must be—
- (a) made in the approved form, and
  - (b) accompanied by—
    - (i) the documents, including photographs, specified in the approved form, and
    - (ii) the fee determined under section 17.
- (2) The regulatory authority may require an applicant to lodge the following—
- (a) a safety management plan,
  - (b) a security plan.
- (3) If the applicant is a corporation, the applicant must nominate a responsible person for the corporation.
- (4) The applicant must, if asked by the regulatory authority, give the regulatory authority additional information the regulatory authority reasonably requires to determine the application.

**16AE Grounds to refuse licence**

- (1) The regulatory authority must not grant a licence unless the regulatory authority is satisfied of the following—
- (a) the applicant is eligible for the licence,

- (b) the application has been properly made in accordance with section 16AD,
  - (c) if the regulatory authority required the applicant to lodge a safety management plan—the plan is appropriate for managing the hazards and risks to safety associated with the activities authorised by the licence,
  - (d) if the regulatory authority required the applicant to lodge a security plan—the plan is appropriate for the safe and secure handling of the explosives or explosive precursors to be handled under the licence,
  - (e) the applicant has appropriate facilities, systems and procedures in place for the safe and secure handling of the explosives and explosive precursors to be handled under the licence.
- (2) The regulations may prescribe additional grounds on which a licence must or may be refused.

**16AF Conditions of licences**

- (1) A licence is subject to—
- (a) conditions prescribed by the regulations for the licence, and
  - (b) conditions imposed by the regulatory authority.
- (2) The regulatory authority may impose conditions on a licence—
- (a) when granting the licence, or
  - (b) at another time by written notice to the licence holder.
- (3) The regulatory authority may, by written notice to the licence holder, vary or revoke a condition imposed on the licence.
- (4) The regulatory authority may not vary or revoke a condition prescribed by the regulations.

**16AG Offence to contravene conditions of licence**

A licence holder must not contravene a condition to which the licence is subject.

Maximum penalty—50 penalty units.

**16AH Duration of licences**

- (1) A licence remains in force—
- (a) for the period specified in the licence, or
  - (b) if no period is specified in the licence—until cancelled under Division 5.
- (2) Also, a licence is not in force during a period in which the licence is suspended.

**[19] Part 3, Division 4, heading**

Insert before section 17—

**Division 4 Other matters relating to security clearances and licences**

**[20] Section 19 Regulations relating to licences**

Omit “licences” wherever occurring in section 19(2)(h) and (i).

Insert instead “licence documents”.

**[21] Section 19A**

Insert after section 19—

**19A Regulations relating to security clearances**

The regulations may make provision for security clearances, including for the following—

- (a) applications for security clearances and the restoration of security clearances, including fees,
- (b) the eligibility of individuals to apply for a security clearance,
- (c) continuing education and training for persons who hold security clearances,
- (d) the replacement of lost, destroyed or defaced security clearance documents,
- (e) the return of security clearance documents requiring alteration,
- (f) procedures relating to the suspension or cancellation of security clearances.

**[22] Part 3, Division 5, heading**

Insert before section 20—

**Division 5 Suspension and cancellation**

**[23] Section 23A**

Insert after section 23—

**23A Notification of suspended or cancelled licences or security clearances**

The regulatory authority must give notice of the suspension or cancellation of a licence or security clearance to the persons, and in the way, prescribed by the regulations.

**[24] Part 3, Division 6**

Insert after section 24A—

**Division 6 Exemptions**

**24B Exemptions from requirement to hold licence**

A person is exempt from the requirement to hold a licence—

- (a) as set out in Schedule 2, Part 1, or
- (b) as prescribed by the regulations.

**24C Exemptions from requirement to hold security clearance**

A person is exempt from the requirement to hold a security clearance—

- (a) as set out in Schedule 2, Part 2, or
- (b) as prescribed by the regulations.

#### **24D Other exemptions**

- (1) A person may apply to the regulatory authority for an exemption from a provision of this Act or the regulations.
- (2) An application for an exemption must be—
  - (a) in writing, and
  - (b) accompanied by the fee determined by the regulatory authority.
- (3) The regulatory authority may, when considering an application for an exemption, consult the persons or bodies the regulatory authority considers appropriate.
- (4) The regulatory authority may, by written notice to the person who applied for the exemption—
  - (a) approve the application and grant the exemption with or without conditions, or
  - (b) refuse the application.
- (5) The regulatory authority must refuse an application if the regulatory authority is not satisfied—
  - (a) the applicant is capable of achieving at least an equivalent level of safety and security as would be achieved by complying with the relevant provision, or
  - (b) the application of the provision to the applicant is inappropriate or unnecessary in the circumstances.
- (6) An exemption applies for—
  - (a) the period, not longer than 5 years, specified in the written notice, or
  - (b) if no period is specified—5 years from the date of the written notice.

#### **24E Cancellation of exemptions**

- (1) The regulatory authority may cancel an exemption—
  - (a) if the holder of the exemption fails to comply with a condition of the exemption, or
  - (b) if satisfied cancellation is justified on safety or security grounds, or
  - (c) if satisfied the exemption is of no practical effect, or
  - (d) on other grounds prescribed by the regulations.
- (2) Before cancelling an exemption, the regulatory authority must make reasonable efforts to give the holder of the exemption—
  - (a) reasonable notice of the regulatory authority's intention to cancel the exemption, and
  - (b) an opportunity to make submissions to the regulatory authority about the proposed cancellation.
- (3) The regulatory authority must make reasonable efforts to give the exemption holder written notice the exemption has been cancelled.

#### **24F Register of exemptions**

- (1) The regulatory authority must keep a register of exemptions granted under section 24D.
- (2) The register must—

- (a) be kept in the way determined by the regulatory authority, and
- (b) include the information prescribed by the regulations, and
- (c) be made publicly available in the way prescribed by the regulations.

**[25] Part 3A**

Insert after Part 3—

## **Part 3A Explosives retention, testing and destruction procedures**

### **Division 1 Preliminary**

#### **24G Interpretation**

- (1) In this part—
- affected person** means—
- (a) an eligible person, or
  - (b) a defendant or accused person in proceedings relating to a forfeited explosive.

**analyst** means—

- (a) a person appointed in writing by the regulatory authority as an analyst for this Act, or
- (b) a person belonging to a class of persons prescribed by the regulations for this definition.

**certificate of analysis** means a certificate under section 24K.

**destroy** means dispose of by destruction or other means.

**destruction order**—see section 24L(1).

**eligible person**, for a forfeited explosive, means a person who was the person entitled to the forfeited explosive immediately before the explosive or explosive precursor was forfeited to the State.

**forfeited explosive** means an explosive or explosive precursor forfeited to the State under the *Work Health and Safety Act 2011*, section 179(1)(c), as applied by this Act, section 27.

**Note**— The *Work Health and Safety Act 2011*, section 179(1)(c), as applied by this Act, section 27, provides a thing is forfeited to the State if the regulator reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.

**person entitled** has the same meaning as in the *Work Health and Safety Act 2011*, section 179(9).

- (2) In this part, a reference to the quantity of a forfeited explosive is a reference to the quantity of the explosive or explosive precursor immediately before the explosive or explosive precursor was forfeited to the State.

#### **24H Application of part**

- (1) This part applies to a forfeited explosive if an eligible person—
- (a) has not applied to the Industrial Relations Commission for a review of the decision to forfeit the explosive or explosive precursor under the *Work Health and Safety Act 2011*, section 229 within the time provided for by that section, or

- (b) has applied to the Industrial Relations Commission for a review of the decision and the decision has been confirmed by the Commission constituted by a single member or, on appeal against the decision, by the Full Bench of the Commission.
- (2) This part is not intended to limit or exclude the rights and powers of the regulatory authority to destroy explosives or explosive precursors forfeited to the State under the *Work Health and Safety Act 2011*, section 179(1)(a) or (b).

## **Division 2 Retention, testing and destruction of explosives**

### **24I Retention of explosives**

The regulatory authority may keep all or part of a forfeited explosive for the purpose of dealing with the explosive in accordance with this part and the regulations.

### **24J Testing of explosives**

The regulatory authority may, in accordance with the regulations, direct an analyst to—

- (a) determine the quantity or mass of a forfeited explosive, and
- (b) test and analyse a representative sample of the forfeited explosive to determine the identity of the explosive, and
- (c) give a certificate of analysis for the forfeited explosive.

### **24K Certificate of analysis**

- (1) An analyst responsible for the analysis of a forfeited explosive may give a certificate specifying the following—
  - (a) the physical description of the explosive,
  - (b) the identity of the explosive,
  - (c) the quantity or mass of the explosive,
  - (d) the result of the analysis.
- (2) In proceedings under this Act, a certificate purporting to be signed by an analyst is—
  - (a) admissible in the proceedings without proof of the signature, employment or appointment of the person appearing to have signed the certificate, and
  - (b) prima facie evidence of the matters certified.

### **24L Destruction of explosives**

- (1) The regulatory authority may, by written order, direct that a forfeited explosive be destroyed (a *destruction order*).
- (2) A destruction order may be made—
  - (a) subject to the requirements of this part or the regulations, and
  - (b) if the regulatory authority is satisfied of the following—
    - (i) a representative sample of the forfeited explosive has been taken and kept as required by the regulations,
    - (ii) particulars of the forfeited explosive have been recorded as required by the regulations,

- (iii) an analyst has given a certificate of analysis in relation to the forfeited explosive,
  - (iv) a copy of the certificate of analysis has been given to an affected person.
- (3) A destruction order must not authorise the destruction of an amount of a forfeited explosive that is required by the regulations to be kept.
- (4) A forfeited explosive must not be destroyed earlier than 28 days after the day on which the certificate of analysis in relation to the forfeited explosive was given to an affected person.
- (5) The Local Court may, on the application of the regulatory authority, make an order authorising the destruction of a forfeited explosive under this section if the Court is satisfied of the following—
  - (a) a copy of the certificate of analysis cannot practicably be served on the affected person,
  - (b) the destruction order has otherwise been made in accordance with this section.
- (6) The regulatory authority may destroy a forfeited explosive without complying with this section in circumstances prescribed by the regulations.

**24M Review of certificate of analysis**

- (1) This section applies if a certificate of analysis in relation to a forfeited explosive is given by an analyst.
- (2) The Local Court may, on the application of an affected person for the forfeited explosive, make a review order.
- (3) An application for a review order must be made no later than 28 days after a copy of the certificate of analysis in relation to the forfeited explosive is given to the affected person.
- (4) The Local Court may make a review order only if the Court is satisfied that in relation to the forfeited explosive—
  - (a) there has been a substantial failure to comply with this Act or the regulations, or
  - (b) there is a reasonable doubt about the accuracy of the certificate of analysis.
- (5) A review order made by the Local Court may require that—
  - (a) the forfeited explosive be given to a second analyst for determination of the identity or the quantity or mass of the explosive, or
  - (b) a further certificate of analysis in relation to the forfeited explosive be given to the applicant.
- (6) If, despite section 24L, an application has been made under this section, the forfeited explosive may be destroyed under this part or the regulations only if—
  - (a) the application is withdrawn or refused, or
  - (b) the application is granted and a certificate of analysis is given to the applicant and the regulatory authority in accordance with the review order.

### **Division 3      General**

#### **24N    Regulations relating to retention, testing, destruction and other matters**

- (1) The regulations may provide for the retention, testing and destruction of forfeited explosives.
- (2) Without limiting subsection (1), the regulations may provide for the following matters—
  - (a) the retention of all or part of a forfeited explosive,
  - (b) the weighing, testing and analysis of a forfeited explosive,
  - (c) the recording, handling, storage, transport and destruction of a forfeited explosive,
  - (d) evidentiary certificates, and prima facie evidence, relating to the identity, quantity, mass, testing, analysis, retention, handling, storage and transport of forfeited explosives,
  - (e) the qualifications required for appointment as an analyst.

#### **24O    Presumption on appeal**

- (1) This section applies to a person who—
  - (a) was legally represented before the Local Court on the trial of an offence in relation to a forfeited explosive, and
  - (b) appeals a determination made by the Court in relation to the offence.
- (2) On appeal, a particular in the court attendance notice about the identity, quantity or mass of the forfeited explosive is, for the appeal, presumed to be correct if—
  - (a) the person pleaded guilty to the offence, and
  - (b) before the appeal is heard, the forfeited explosive is destroyed after a destruction order is made under this part.

#### **[26]    Section 27A**

Insert after section 27—

#### **27A    Unauthorised entry to place explosives or explosive precursors are manufactured or stored**

- (1) A person must not enter premises used to manufacture or store an explosive or explosive precursor unless the person—
  - (a) is authorised to enter the premises by the licence holder responsible for the premises, or
  - (b) otherwise enters the premises with lawful authority.Maximum penalty—250 penalty units.
- (2) An authorised person may—
  - (a) direct a person who enters premises in contravention of this section to leave the premises, and
  - (b) if the person fails, without reasonable excuse, to leave the premises immediately after being directed to leave—use reasonable force to remove the person.
- (3) In this section—

***authorised person*** means the following—



- (a) a licence holder,
- (b) an employee of the licence holder,
- (c) a person acting with the authority of the licence holder,
- (d) an inspector,
- (e) a police officer.

**[27] Section 30A**

Insert after section 30—

**30A Disposal of unwanted or unusable explosives**

A person may dispose of unwanted or unusable explosives—

- (a) by surrendering the explosives to the regulatory authority at the place and in the way determined by the regulatory authority, or
- (b) in the way prescribed by the regulations.

**[28] Section 36 Regulations**

Insert after section 36(2)—

- (2A) The regulations may provide for a police officer to exercise specific functions and powers of an inspector under this Act or the regulations.

**[29] Schedule 1 Savings, transitional and other provisions**

Insert after clause 13—

## **Part 6 Provision consequent on enactment of Explosives Amendment Act 2023**

### **14 Exemptions**

An exemption granted under the *Explosives Regulation 2013*, clause 112 or 113, and in force immediately before the commencement of this clause, is taken to be an exemption under section 24D.

**[30] Schedules 2 and 3**

Insert after Schedule 1—

## **Schedule 2 Exemptions**

sections 24B and 24C

### **Part 1 Licences**

#### **1 Inspectors and authorised officers**

- (1) An inspector or authorised officer who handles an explosive or explosive precursor for the inspector's or officer's duties is not required to hold—
  - (a) a security clearance, or
  - (b) a licence.
- (2) In this clause—

**authorised officer** means an officer of the regulatory authority authorised by the regulatory authority to handle an explosive or explosive precursor during the officer's duties.

## 2 Emergency services

- (1) An officer of an emergency service who comes into possession of an explosive or explosive precursor in an emergency situation is not required to hold the following to handle the explosive or explosive precursor—
  - (a) a security clearance,
  - (b) a licence.
- (2) An emergency service coming into possession of an explosive or explosive precursor in an emergency situation is not required to hold a licence to handle the explosive or explosive precursor.
- (3) An exemption under this clause applies only to handling for the following purposes—
  - (a) transporting,
  - (b) possessing,
  - (c) storing,
  - (d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor.
- (4) In this clause—

**emergency service** means the following—

  - (a) the Ambulance Service of NSW,
  - (b) Fire and Rescue NSW,
  - (c) the New South Wales Mines Rescue Brigade established by the *Coal Industry Act 2001*, section 33,
  - (d) the New South Wales Volunteer Rescue Association Incorporated, ABN 68 767 393 968,
  - (e) the NSW Police Force,
  - (f) the NSW Rural Fire Service,
  - (g) the State Emergency Service,
  - (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*,
  - (i) a body prescribed by the regulations for this definition.

## 3 Police officers

- (1) A police officer who comes into possession of an explosive or explosive precursor during the officer's duties is not required to hold the following to handle the explosive or explosive precursor—
  - (a) a security clearance,
  - (b) a licence.
- (2) An exemption under this clause applies only to handling for the following purposes—
  - (a) transporting,
  - (b) possessing,
  - (c) storing,

- (d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor.
- (3) Explosives or explosive precursors stored under an exemption must be stored in accordance with the regulations.

#### **4 Police explosives technicians**

- (1) A police explosives technician who handles an explosive or explosive precursor during the technician's duties is not required to hold the following—
  - (a) a security clearance,
  - (b) a licence.
- (2) An exemption under this clause applies only to handling an explosive or explosive precursor for the following purposes—
  - (a) transporting,
  - (b) possessing,
  - (c) storing,
  - (d) transferring possession of an explosive or explosive precursor to a person authorised to possess the explosive or explosive precursor,
  - (e) using,
  - (f) disposing.
- (3) In this clause—  
*police explosives technician* means a member of the NSW Police Force whose duties include handling explosives and explosive precursors.

## **Part 2 Security clearances**

### **5 Supervised handlers**

A person is not required to hold a security clearance to handle an explosive or explosive precursor if—

- (a) the person is—
  - (i) employed or engaged by a licence holder who is authorised to handle the explosive or explosive precursor, or
  - (ii) being instructed in the handling of explosives by a licence holder who holds a licence authorising the handling of the explosive or explosive precursor, and
- (b) the person is handling the explosive or explosive precursor under the immediate supervision of another person who holds an in force security clearance, and
- (c) the explosive or explosive precursor is handled in a way authorised by the licence.

### **6 Fireworks**

A person is not required to hold a security clearance to handle display fireworks if the handling is authorised by a fireworks, single use, licence.

## **Schedule 3 Dictionary**

section 3

**ADG Code** means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, as published by the Australian Government, and in force from time to time.

**affected person**, for Part 3A—see section 24G(1).

**analyst**, for Part 3A—see section 24G(1).

**applicant**, for an explosive, means the person who applied for authorisation of the explosive.

**approved form** means the form approved by the regulatory authority.

**Australian Explosives Code** means the *Australian Code for the Transport of Explosives by Road and Rail*, as published by the Australian Government, and in force from time to time.

**authorised explosive** means an explosive authorised under Part 2A.

**certificate of analysis**, for Part 3A—see section 24G(1).

**Class 1 dangerous good** means a Class 1 dangerous good under the ADG Code or the Australian Explosives Code.

**classification code** means the code assigned to an explosive under the ADG Code, which—

- (a) comprises a combination of the number of the hazard division of the explosive under the ADG Code and the letter of the compatibility group of the explosive, and
- (b) identifies the kinds of explosive substances and articles that are compatible for transport or storage purposes.

**destroy**, for Part 3A—see section 24G(1).

**eligible person**, for Part 3A—see section 24G(1).

**exercise** a function includes perform a duty.

**explosive** includes the following—

- (a) a substance, or a thing containing a substance, manufactured or used with a view to produce—
  - (i) a practical effect by explosion, or
  - (ii) a pyrotechnic effect,
- (b) an article or substance that—
  - (i) is classified under the ADG Code as too dangerous to transport, and
  - (ii) can produce an explosive or pyrotechnic effect,
- (c) a Class 1 dangerous good,
- (d) an article or substance prescribed by the regulations.

**explosive precursor** means the following—

- (a) security sensitive ammonium nitrate,
- (b) a thing prescribed by the regulations.

**forfeited explosive**, for Part 3A—see section 24G(1).

**function** includes power, duty and authority.

**handling** includes transporting, manufacturing, processing, possessing, using, preparing for use, treating, dispensing, storing, packing, selling, supplying, importing into the State from another country, rendering harmless, abandoning, destroying and disposing.

**inspector** means an inspector appointed under Part 4.

**licence** means a licence under this Act.

**licence holder** means the holder of a licence under this Act.

**manufacture**, in relation to an explosive, includes—

- (a) blending substances to make the explosive, and
- (b) breaking up the explosive, and
- (c) re-making, altering or repairing the explosive.

**person entitled**, for Part 3A—see section 24G(1).

**premises** means—

- (a) land, a building or an enclosed place, and
- (b) a portable structure.

**prohibited explosive** means an explosive that is not authorised under Part 2A.

**register of explosives** means the register kept under section 9C.

**regulatory authority**—see section 4.

**responsible person**, for a corporation, means a person nominated in accordance with the regulations to be a responsible person for the corporation.

**safety management plan**, for Part 3, Division 3—see section 16AA.

**security clearance** means a security clearance granted under Part 3.

**security plan**, for Part 3, Division 3—see section 16AA.

**security sensitive ammonium nitrate**—

- (a) includes the following—
  - (i) ammonium nitrate that is not a Class 1 dangerous good,
  - (ii) ammonium nitrate emulsions, suspensions, gels or mixtures containing more than 45% ammonium nitrate,
  - (iii) ammonium nitrate prescribed by the regulations for this definition, and
- (b) does not include ammonium nitrate solution.

**security sensitive dangerous substance** means the following—

- (a) security sensitive ammonium nitrate,
- (b) another substance prescribed by the regulations.

**supply**—see section 4A.

**transport** includes—

- (a) loading for transport, and
- (b) unloading after transport.

**vehicle** means the following—

- (a) a motor vehicle within the meaning of the *Road Transport Act 2013*,
- (b) a unit of rolling stock within the meaning of the *Rail Safety National Law (NSW)*.

**vessel** has the same meaning as in the *Ports and Maritime Administration Act 1995*.

[Second reading speech made in—

Legislative Assembly on 23 August 2023

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